

REMARKS

Claims 1-8, 10 and 12-14 are pending, of which claims 1, 10, 18, 21, 22, 23 and 24 are independent. No new matter has been introduced. Applicants respectfully submit that the foregoing claims define over the cited references. Accordingly, Applicants respectfully request the Examiner to pass the application to allowance.

Rejection of Claims under 35 U.S.C. §102

Claims 1-8, 10 and 12-24 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pre-Grant Patent Publication No. 2004/0133523 to Inokuchi et al. (hereinafter “Inokuchi”) (Office Action, page 2, § 5). Applicants respectfully traverse the rejection with following remarks.

A. Claim 1

Applicants respectfully submit that Inokuchi does not disclose at least the following features of claim 1: *providing a protection program on the optical medium, the protection program residing on the optical medium with the software program* and that *the protection program searching for a file on the optical medium prior to determining a media type of the optical medium, the file containing the software program*.

1. First claim feature: *the protection program searching for a file on the optical medium prior to determining a media type of the optical medium, the file containing the software program*

Applicants respectfully submit that Inokuchi is silent about the determining program *searching for a file containing the software on the optical medium* before the determining program determines whether the loaded disc is an original disc or a copied disc. In Inokuchi, the file containing the software is already installed on the computer. Inokuchi determines whether or not the inserted disc is genuine by determining whether the disc is a reproduction-only disc, i.e. an original, or a writable disc, i.e. a copy.

Inokuchi distinguishes between the reproduction-only disc and the writable disc by using the differences between the data format of a reproduction-only disc and the data format of a

writable disc. The information intrinsic to a writable disc is not present on a reproduction-only disc (§ [0033]). A reproduction-only disc and a writable disc differ from each other in information with respect to recording of their Table Of Contents (TOC) data. Thus, information with respect to recording is read from a disc loaded into the drive. When the information that has been read is information intrinsic to a reproduction-only disc, it can be determined that the disc loaded into the drive should be an original disc. When the information that has been read is information intrinsic to a writable disc, it can be determined that the disc loaded into the drive is not an original disc, but a writable disc, namely, a copied disc (§ [0034]). As such, Inokuchi determines whether or not the disc is original by analyzing the TOC data. Inokuchi does not disclose that the determining program searches for *a file on the optical medium prior to determining a media type of the optical medium, the file containing the software program*, as provided in Applicants' claim 1. Thus, Inokuchi does not disclose each and every element of claim 1.

2. Second claim feature: *providing a protection program on the optical medium, the protection program residing on the optical medium with the software program*

Inokuchi fails to disclose or suggest that the protection program resides on the optical medium with the software program because in Inokuchi, the software program is already installed on the computer and does not reside on the optical medium. The Examiner acknowledges that Inokuchi discloses a particular instance where the protection programs and/or software programs are already installed on the computer (Office Action, page 7, § 6). Applicants respectfully submit that, as will be explained below, in Inokuchi, the protection programs are *always* already installed on the computer, and are not limited to a particular instance as suggested by the Examiner.

The Examiner asserts that Inokuchi teaches an embodiment where the determining program is stored on the disc. However, the section of Inokuchi cited by the Examiner refers to the embodiment where the determining program is already installed on the computer (§ [0155]). The cited section merely indicates that the software, such as a game or installer software, contains a determining program that determines whether the loaded disc is an original or a copied disc when the disc loaded into the drive is initially accessed (§ [0155]). This section is

silent about whether the determining program is stored on the disc. That is, contrary to the Examiner's allegation, Inokuchi does not disclose or suggest an embodiment where the determining program is stored on the disc. Nowhere in the reference does Inokuchi disclose that the determining program *resides on the optical medium* as asserted by the Examiner.

In light of the foregoing remarks, Applicants respectfully submit that Inokuchi does not disclose a protection program provided *on the optical medium* or a protection program that *resides on the optical medium with the software program*, as recited in Applicants' claim 1. In Inokuchi, the protection program, i.e. the determining program, is installed on the computer ([0030] and Figure 1).

For the reasons set forth above, Applicants respectfully request that the 35 U.S.C. §102(e) of claim 1 be withdrawn.

B. Claims 2-8

Claims 2-8 depend from and incorporate all the features of claim 1. As such, claims 2-8 are allowable for at least the same reasons as set forth above for claim 1. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 2-8 under 35 U.S.C. § 102(e).

C. Claims 10 and 12-24

Independent claims 10, 18, 21-24 recite *searching for a file on the optical medium prior to determining a media type of the optical medium, the file containing the software program*. Independent claims 10 and 18 further recite *identifying a protection program on the optical medium*.

In light of the remarks provided with respect to claim 1, Applicants respectfully submit that Inokuchi does not disclose each and every feature of claims 10, 18 and 21-24. Claims 12-17 depend from claim 10, and claims 19-20 depend from claim 18. Dependent claims incorporate each and every element of the independent claim upon which they depend. As such, claims 12-17 and 19-20 are allowable for at least the same reasons as set forth above for claims 10 and 18.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 10 and 12-24 under 35 U.S.C. § 102(e).

CONCLUSION

In light of the above amendments and arguments, Applicants respectfully submit that all of the pending claims are in condition for allowance. Should the Examiner feel that a teleconference would expedite the prosecution of this application, the Examiner is urged to contact the Applicants' attorney at (617) 227-7400.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080, under Order No. MWS-107RCE2. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: December 14, 2009

Respectfully submitted,

By: /Neslihan I. Doran/

Neslihan I. Doran

Registration No.: 64,883

LAHIVE & COCKFIELD, LLP

One Post Office Square

Boston, Massachusetts 02109-2127

(617) 227-7400

(617) 742-4214 (Fax)

Attorney/Agent For Applicant